Annex "A," Subparagraph 2d, Political Background

PUBLIC ORDER AND SAFETY

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692 Because of the large population and the complex society which exists in the East China Region, the Chinese Communists face many difficulties in maintaining public order and safety within its borders. In attempting to achieve this end, and in consolidating their political gains, the Communists have not hesitated to employ a strategy of terror. The Communists employ various means for the suppression of opposition and maintain a rigid control over the population. The People's court system, the People;s procuratorates, and the public security agencies are all instruments of suppression.

The People's court is conceived neither as an institution of justice nor as a protector of individual rights; it is designed to serve as a weapon of the state for "safeguarding the People's democratic system and protecting public property." In a similar manner, in order to insure observance of the law, the local People's procuratorate, although a "judicial organ," exercises procuratorial authority over all local state agencies, over government workers, and over all citizens in general. It also serves as an agency of control by supervising People's courts in matter of adjudication, by exercising a check over public security agencies in investigation activities and in the execution of judgment in criminal cases. The public security agency, the police, and the security forces are instruments of violence. They assume direct responsibility for the maintenance of public order.

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625 In addition to the use of violence as their
692 primary means these various agencies of suppression form an integrated system, subject to the control of the Central People's Government and rigidly supervised by the Communist Party, and they all share the responsibility of ensuring the execution of codes and regulations relative to the maintenance of public order and safety. This chapter deals with the People's courts and People's procuratorate, the public security agencies and police, and codes and laws governing counterrevolutionary activities.

I. People's Court and People's Procuratorate

A. People's Court

692 After the establishment of the Supreme People's Court[1] in November 1949, the East China Branch Court of the Supreme Peope's Court was established. Liu Ming-sen was named as its president. The People's Court served as the representative of the Supreme People's Court in this region and as the final court of the region. At about the same time, the Municipal People's Court of Shanghai was also established.[2] However, it was placed under the authority of the Military Control Committee of Shanghai. This fact reduced the Municipal Court to a combination of military and administrative tribunal. Local courts in this

1. Report of Shen Chün-ju, former President of the Supreme People's Court, People's Daily, June 2, 1950. p. 1.

2. Work report of Shanghai Court, Liberation Daily, January 8, 1950; April 31, 1950, p. 5.

692 region remained intact and were permitted to function with only minor changes in personnel. Centralized control over these local courts was subsequently established.

As a political weapon of the state, the People's courts have been subordinated in their judicial function to the support of the Communist program. Indeed, the concept of judicial independence is unknown in the Communist language. Prior to 1952, while the Communists attempted desperately to consolidate their political power and to destroy existing political forces, the People's courts served as instruments of violence, working in co-operation with the land reform in farming communities and other movements in the cities for the suppression of the opposition. During this time, People's tribunals were widely established and their functions were politically apparent. After the system was comfortably entrenched, the People's court underwent reform. In July 1952 a nationwide Judicial Reform Campaign was launched, with a few to the destruction of the existing judicial system, to be replaced by the People's court system. This new system is based upon "socialist" concepts and is characterized by special techniques and methods in adjudication. Since 1953, the People's courts have supported the nationwide program of election and economic construction; at the same time, the People's court undertook further consolidation in preparation for the establishment on a permanent basis of a new People's court system. The nature and the spirit of the People's court is expressed in the newly promulgated Organic Law of the People's Court of the People's Republic of China.

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692 1. The First Stage (1949 - June 1952). The wide use of the People's tribunal was the distinguishing feature of the judicial activities during this period, and, in the East China Region, this not only resulted in the complete subordination of judicial function to political expediency, but facilitated all transfer of judicial authority from the hands of trained personnel to that of Party functionaries. At least three occasions can be cited when People's tribunals were used for the display of violence -- those established during the Land Reform Movement, the Three-Anti Campaign, and the Five-Anti People's Campaign.

According to the regulation of the People's tribunal for land reform issued in 1951 by the Government Administration Council,[3] the county and city tribunals were established directly under the leadership of the People's governments concerned and were component parts of the People's court on each respective level. Below the county tribunals, ch'ü, People's tribunals, were established. These tribunals were given the sole authority in criminal matters and were authorized to impose sentences up to five years' imprisonment, to prosecute counterrevolutionaries and to initiate arrests. As of April 1951, some 58 county People's tribunals and 316 ch'ü tribunals

3. Text in Hua-tung-ch'ü Ts'ai-ching Cheng-ts'e Fa-ling Hui-pien, [Compendium of Laws and Regulation Concerning Financial and Economic Policies in the East China Region], Vol. 2, Shanghai, East China People's Printing House, 1951, pp. 1, 950-52.

692 had been established in Fukien Province.[4] It was reported that in the Northern Special District of Kiangsu Province there were 22 county People's tribunals and 59 ch'ü tribunals.[5]

693 The political character of the tribunal can be detected by the composition of the adjudication committee, consisting of a president, a deputy, and several members half of whom were appointed by the People's government and half "elected" by the People's representatives drawn from the public security agencies, the Peasant's Association, and other mass organizations. In most cases, the county head and the ch'ü head were concurrently the presents of their respective tribunals.

692 The tribunal employed mass-trial and on-the-
695 spot judgment as their main technique in adjudication. When cases were heard, the judges bombarded the masses with propaganda. The masses were sufficiently agitated to denounce those whom the Party had previously singled out for prosecution. After denunciations were made, judgment was passed by the masses and sentence rendered at the instigation of the adjudication committee controlled by the Party. Mass trials usually resorted to intimidation and violence. To obtain

4. Liberation Daily, April 4, 1951, p. 6; for their activities in the region, ibid., January 8, 1951, p. 1.

5. Ibid., April 7, 1951, p. 5.

692 695 wide coverage, "mobile trials," reaching into every village, were conducted by the People's tribunals.

692 During the Three-Anti and Five-Anti campaigns, People's tribunals were organized in the administrative units and in the armed forces. Directives issued by the Government Administration Council prescribed the function and power of the Three-Anti People's tribunals and the Five-Anti People's tribunals.[6] The president of the tribunal was generally the head of the office. Members of the committee were either activists of the organizations concerned or representatives from various Party-controlled organizations. The power of the tribunal included the rendering of the death sentence. Organized under the Municipal People's court, People's tribunals were installed in every ch'ü, held mass trials, and enjoyed enormous power.

The People's tribunals as weapons for the suppression of opposition were so effective that they were used again during the nationwide election in 1953-54. The main function of the Election People's Tribunal was to suppress and punish violators and unqualified candidates and voters. They were to work with the election committees and were generally subordinate to the latter. As of February 1954, at least 172 tribunals had been organized among the first group of counties selected for elections in Kiangsu Province.[7]

6. For text of the directives, see People's Daily, March 31, 1952, p. 1; ibid., March 25, 1952, p. 1.

7. Liberation Daily, Feb. 7, 1954, p. 3.

2. The Second Stage: The Judicial Reform Campaign of July 1952.

692 The Judicial Reform Campaign was launched immediately after the conclusion of the Three-Anti and Five-Anti campaigns. Many defects, particularly involving judicial personnel who had previously served under the Nationalist Government had been found within the People's courts. In reality, the campaign was a mass movement aimed at eliminating old judicial practices in the People's courts by the liquidation of old personnel and the introduction of new methods.

The campaign, as violent as other movements conducted during this period, aroused the masses to recognize, accuse and pass judgment upon corrupt judicial officers, called for the use of criticism and self-criticism of ideology and individual work, the reorganization of judicial organs, and the reconstruction of judicial authority based upon the new People's court system.

During the campaign, the influence and the "crimes" committed by the old-established judicial personnel were deliberately exaggerated by the Communists in order to justify liquidation. In the Shanghai Municipal People's Court, for example, among the 104 members of the adjudication committees, 80 were old-established workers, and most of these were committee chairmen.[8] This high percentage was common in all provinces; the higher the court, the higher the percentage.

8. Report of Shih Liang, Minister of Justice; Liberation Daily, Aug. 24, 1952, p. 1. Report on campaign in East China, ibid., August 21, 1952, p. 1.

682 Corruption cases involving old-established workers were reported to be as high as 59.52 per cent in the Shanghai, Nanking, and Hangchow municipal courts and in courts in the South Kiangsu special administrative district.

As well as seeking the elimination of old-established personnel, the campaign sought the disposition of an accumulation of untried and mistried cases. Mass trials similar to those held by the People's tribunals were led by activists who had carried out the preliminary investigations. In Shanghai, for example, many activitists who had gained positions of authority during the Three-anti and Five-anti campaigns participated in the mass trials. In the county of Ch'ing-p'u in the South Kiangsu special district, 56 cases were disposed of in seven days.[9] In Ch'ang-shu in the same district, 150 mass meetings were held in which more than 113,000 people participated, and another 15,000 are reported to have participated in a period of mass trials in which 970 cases were disposed of in the space of ten days. As of February 1953, in the East China Region, 165,00 such cases had been disposed of; of these cases, 70 per cent were given mass trials.[10] The rapidity of the trials can suggest nothing but the degree of injustice with which they were conducted. To further establish a foundation of mass participation in "judicial" activities, many mediation committees were organized in this region. A total of 45,960 such committees were organized in rural and urban districts, and 294,900 people were actively engaged in committee-work.

9. Ibid., Nov. 11, 1952, p. 1.
10. Ibid., Feb. 1, 1953, p. 1.

692 695 In connection with the elimination of the old system, Article 17 of the Common Program, adopted in October 1949, declared the abolition of all laws, decrees, and judicial systems of the Kuomintang government, the complete abandonment of the Kuomintang code, the Liu-fa Ch'üan-shu [The Compenidum of the Six Codes of the Republic of China],[11] and the establishment of the People's Judicial System. The Communists specifically attacked the old system on four counts: (a) the judiciary had been a weapon employed by one class for the suppression of the opposing class, instead of an instrument of the People's dictatorship to serve the interests of the state; (b) the exceedingly mechanical procedure of the old courts should be condemned as bourgeois and unnecessary; (c) the assumption of a purely legalistic approach to a case did not reflect its economic and social background and was contrary to the socialist view of law; and (d) the use of precedents for the adjudication of a case should be discarded as a bourgeois practice.

On the other hand, the Communists defend their system on "socialist" grounds and by introducing new concepts and techniques into the practice of the courts. They are: (a) the reduction of appellate cases and the concentration of judicial authority among the lower courts; (b) the adoption of adjudication committees and the administration of law by collegia; (c) the review and periodic check of non-appellate cases by the higher courts;

11. Wu Ching-hsiung, Chung-hua Min-kuo Liu-fa Hui-pien [Compendium of the Six Codes of the Republic of China], 6 vols., Shanghai, Hui-wen t'ang, 1947.

692 695 (d) the conduct of "mobile trials"; (e) the use of People's assessors, which, unlike the Western jury system, include representatives from various People's organizations; (f) the use of "comrade trial meetings" for cases involving ideology and labor discipline among Party members and workers in factories, offices, and enterprises; and (g) other methods, such as oral inquiries, on-the-spot investigations, the people's reception rooms, and mediation committees.

693 692 3. The Third Stage: (1953-1955). With the gradual introduction of Communist concepts and teachings into the People's courts in the East China Region, new judicial personnel were trained. As a result of the second session of the National Judicial Conference held in September 1953, a directive was issued calling for the training in each region of 200-500 judicial workers.[13] Those who joined the courts during the Judicial Reform Campaign were sent to schools for further training; a reported 205 schools for judicial personnel[14] were in existence in 1952. Students of law and political science were also encouraged to join.

692 Effort was also made to strengthen judicial authority at lower levels and to establish special courts in industrial and mining organizations. As of July 1955, according to Shih-Liang, reporting at the Second Session of the National People's Conference, 3,795 circuit courts[15] and 157,966 mediation committees had been established at the lowest level; these 3,795 circuit courts were

13. People's Daily, Sept. 10, 1953, p. 1.
14. Liberation Daily, Nov. 10, 1952, p. 3.
15. People's Daily, July 30, 1955, p. 6.

692 to be transformed into People's tribunals. During 1953 and 1955, effort was made to establish special courts within industrial and transportation organizations in East China. As of August 1955, only eleven railway courts and two waterway courts had been established in the nation. Because of the growing number of cases involving economic matters, judicial work in the industrial and business fields was also strengthened. As a result, some 120 judicial organizations were established to settle disputes arising in the fields of business and industry.[16]

After the promulgation of the Constitution and the passage of the new Organic Law of the People's Court[17], the judicial system was placed on a "permanent" basis. The new law formalized the "organizational and operational relationships between the courts -- the Supreme People's Court, the High People's Court, in a province and a municipality, and the basic-level People's Court in a country or a city and municipal ch'ü." The court remained the weapon of the state and continued to subordinate its judicial function to political expediency. At least two measures were taken to ensure this: the sanction of the use of the People's tribunal and the political selection of the judges.

Article 17 of the Organic Law of the People's Courts sanctioned the establishment of People's

16. Report by Tung Pi-wu, the President of the People's Supreme Court, ibid., July 23, 1955, p. 3.

17. English text in Current Background, No. 303, Nov. 5 1954, pp. 8-11.

●692 tribunals on a broad and permanent basis. Wherever necessary they were to hold "mobile hearings" in the villages and towns, which the county People's courts could not reach. The selection of judges for the county was another means of extending political control over the judicial agencies. At the provincial and all local levels, although the president of the court was elected by the respective People's congresses, the president and the members of the different adjudication committees were appointed by the People's council. This manner of appointment, while placing the decisive power in the Party-controlled People's council, ensured the political control of the Communist Party over the judicial branch of the government.

B. People's Procuratorate [18]

Although the People's procuratorate is called a "judicial organ," it is in reality a prosecuting agency and an agency of control over both People's courts and public security agencies. Powers exercised by the local offices include the "supervision of decisions, orders, and measures of local state organs, inquiry into criminal activities execution of public prosecutions, supervision of adjudication activities of People's courts, guidance in passing judgment on criminal cases and in the activities of the organs for reform through work, and the right to prosecute criminal cases or to join in the prosecution of important civil cases involving the interests of the state and the people."

18. Ibid.

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692 Prior to the passing of the Organic Law of the People's Procuratorate in 1954, the Supreme People' Procuratorate maintained an office in the East China Region. Now that this office has been abolished, a closer working relationship exists between the central organ and the local offices that remain.

The appointment by the Supreme People's Procuratorate of chief procurators, deputy procurators, and members of the procuratorial committees of the provincial People's procuratorate increases this tendency toward centralization. In the same fashion, the members of city and county ch'ü procuratorial committees are only appointed by the procuratorate at the higher level.

The employment of the People's procuratorate as an agency of terror is further facilitated by its intimate relationship with the Party and the public security agencies. Heads of these People's procuratorates are generally either Party officials or heads of public security agencies. For example, the chief of the East China Branch of the Supreme People;s Procuratorate, Wei Wen-po, was also the secretary general of the East China Bureau of the Central Committee of the Communist Party of China. His deputy, Chou Pi-ch'üan, was formerly in charge of the Department of Organization of the Political Department of the Northeast Military Command and doubtless ly a Party member of long standing. A similar pattern of appointment was observed at local procuratorates. The chief of the Shanghai People's Procuratorate, Yang Fan, was concurrently the

• 692 head of the Department of Public Security of the Shanghai municipal government.[19]

People's procuratorates have co-ordinated their main task with the key drives of the country. The discovery of nationwide corruption and inefficiency together with the urge for renewed suppression of counterrevolutionary activities in 1955 have decided the responsiblities of the People's Procuratorates.

II. PUBLIC SECURITY AGENCIES AND POLICE

A. Public Security Agencies

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625 As the chief instrument of the Communist regime in its effort to maintain close vigilance over the entire populace and to assume the responsibility for the execution of arrests and punishment, the public security agency is perhaps the Communists' most powerful instrument of violence. In addition to its wide establishment in the rural and urban districts, the public security agency maintains organizations of all types in all government and industrial organizations. These public security agencies are further aided by public security networks organized among the masses, and by the judicious use of informers. Security forces, allegedly a branch of the armed forces, in collaboration with other secret agencies of the Communist Party, are the instruments of violence placed at the disposal of the public security agencies at all levels.

1. Organization Under the direction of the Ministry of Public Security of the Central People's

19. Liberation Daily, Jan. 25, 1951, p. 2.

2: Murphy G-4 (no date) 1953 AF15 East China AF15

Shanghai in 1906 and began a crusade especially against American brothels. He became exceedingly unpopular in Shanghai, and finally felt obliged to sue the *Shanghai Gazette* for libel after he had abandoned both his crusade and his post and prepared to return to the United States.[7]

Opium dens in the two foreign settlements remained open long after those in the Chinese city had been officially (i.e., in many cases not actually) closed by imperial decree, and until at least 1935 these establishments flourished publicly. Subsequent regulations merely made them more circumspect. In the French Settlement opium vendors on the streets sold their wares in paper packets with labels giving their names, addresses, and telephone numbers. (Opium establishments were increasingly numerous and open in the Chinese city also after 1911, and into the 1940's). Kidnapping[1] was another important enterprise, and a highly profitable one, since many wealthy Chinese moved into the foreign settlements where their property and persons were more secure but whence they or their children could be spirited over the short distance into Chinese territory and held for ransom. Organized commercial gambling was also a big business, and existed in Shanghai probably on a larger scale than in any other city in the world.[8]

Law enforcement was severely handicapped by the complex but ambiguous legal and administrative situation. Chinese police could not pursue suspects into the foreign settlements, and foreign police were similarly excluded from the Chinese areas. Foreigners in Shanghai lived under extraterritoriality, by which they were governed according to their respective national laws administered by their own consuls, but the law was seldom read to them with the same severity as it would have been at home. For one thing, the consul was often personally involved in business affairs in Shanghai, or was at least a personal friend of the defendant or plaintiff. Petty and grand swindles of all kinds tended to flourish under such conditions. It was easy enough for a foreigner to leave Shanghai if it became necessary, and he seldom had to face legal consequences at home. Chinese residents of the foreign settlements had unprecedented freedom of movement and activity. Foreign legal authority over them was tenuous, Chinese police could not operate in the Settle-

[1] [in Shanghai -- Analyst]

2: Murphy G-4 (no date) 1953 AF15 East China AF15

ments, and extradition was possible only with the approval of the Shanghai Municipal Council (or the French Municipal Council for the French Settlement), which was not often granted. Police expenses accounted for 40 to 50 per cent of the annual budget of the Shanghai Municipal Council from 1855 to 1941, but even this remarkably heavy allotment did not achieve a rule of law and morality.

Shanghai was a place where two civilizations met and where neither prevailed. To the foreigners, it was out of bounds, beyond the knowledge or supervision of their own culture, where each man was a law unto himself, or where he easily adjusted to the prevailing *mores* with no qualms of conscience. Morality was irrelevant or meaningless in Shanghai, an atmosphere which was apparent to even the casual visitor. The fact that Shanghai was also a major port of call and naval station helped to prosper this attitude; sailors often formed a majority of the foreign population.* For the Chinese, Shanghai was equally off limits. Those who had chosen this new kind of life, like the merchants, were by that choice cut off from traditional China and from the sanctions which it imposed. Others who drifted to the city during famines or civil wars, or were kidnapped from the country as domestic servants, had by definition lost their family connections, which in traditional China was total physical and moral destitution. Small wonder that many of them turned to prostitution.

On top of this was the continually fluctuating population. Few people, Chinese or foreign, came to the city with the hope of remaining there long; most of them aimed to make a fortune in a few years and then to leave. Many of them did remain, but so did the frenzied atmosphere. The international, intercultural nature of the city added to its excitement. Foreign hotels found it necessary to advertise their ability to speak with patrons in English, French, German, and Russian as a minimum. Concerned missionaries and visiting judges contended with this tempting and stimulating situation in vain. It remained for the Communist administration of the city after 1949 to substitute their familiar order of austerity and

* The city gave its name to the practice of kidnapping men to work ships whose crews had found Shanghai's attractions too great. Both foreigners and Chinese were "Shanghaied" by roving gangs, often in search of coolie labor for East or West Indian plantations as well as of crews.

2: Murphy G-4 (no date) 1953 AF15 East China AF15

1899, when it was finally agreed (largely as a result of diplomatic pressure) that no Chinese taxes could be collected within the foreign settlements except maritime customs dues (administered by an organ of the Chinese Government staffed by foreigners and Chinese) and the land tax (since the land remained Chinese property), while the Shanghai Municipal Council was free to tax both foreign and Chinese residents of the Settlement.

Neither the Shanghai Municipal Council nor the foreign consuls at Shanghai were ever legally empowered to hinder the passage of Chinese troops through the foreign settlements, although Chinese troops were successfully excluded by *force majeure* and diplomatic bluff from the time of the first threat to the foreign settlements at the so-called Battle of Muddy Flat in 1853.* However, all of the Western powers having treaty relations with China claimed the right to land their own troops in the Settlements for the protection of the property and lives of their citizens. While this right was never formally enunciated in any treaty or agreement, it was practised on numerous occasions when troops landed from foreign warships in the harbor joined the Shanghai Volunteer Corps in defending the Settlement. The foreign settlements were never invaded by a hostile force (although bombs and shells landed there in 1932 and 1937), nor occupied by Chinese troops, from 1853, when the Volunteer Corps was formed, until Japan's assault on China engulfed all of the city after Pearl Harbor in 1941.

The most important right of the foreigners at Shanghai was extraterritoriality, which placed citizens of all powers having most-favoured-nation agreements with China under the jurisdiction of their own national laws wherever they went within China. This principle was first enunciated in the Treaty of Wang Hsia between China and the United States in 1843, and the law was in practice administered to foreigners by their own consular courts. Extraterritoriality gave the foreigners advantages in business and in security of person and property; at Shanghai it was the only solid legal basis

* An incident in the Taiping Rebellion (1850–1864), when Shanghai was for long periods surrounded by rebel or imperial forces. On this occasion, the foreign residents of the city, aided by crews from their ships in the harbor, cleared out a large encampment of imperial troops which had been established within the Settlement boundaries. See F. L. Pott, *A Short History of Shanghai* (1928).

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of real significance for the existence of the city as a foreign enclave. (All special rights of foreigners in China, including extraterritoriality, were renounced by the treaty powers in 1944. Shanghai is now governed as a single unit by the Communist administration.)

The practice at many other treaty ports in China differed. At some, outright territorial concessions were made to each important foreign trading power; at others, the Chinese authorities established "international settlements" where foreigners might purchase land; at others, as at Shanghai, certain areas were reserved for foreign leasing (and later foreign purchase), with title deeds issued by the Chinese Government. Altogether, more than forty such treaty ports were established in China (some of them in fact inland centers far removed from navigable waterways), and administrative practice differed widely among them. The one common feature of all the treaty ports was that goods entering the "port" were exempted from all further taxation on their domestic movement by the payment of one inclusive tax. This provision was intended primarily to expedite the foreign trade of the treaty ports, but it also acted to encourage the movement of domestic trade through these cities with the streamlined tax system as compared with the multiplicity of local taxes which otherwise interrupted the movement of goods within China.

At Shanghai, there were three independent political units (map 3). First, the original Chinese city, to which were added, as the city grew after its opening to foreign trade, areas of predominantly Chinese occupancy outside the limits of the foreign settlements. This Chinese area was governed by the local Chinese county authorities until 1928, when the Nationalist Government established the Municipality of Greater Shanghai (map 5), a new administrative unit covering all of Shanghai outside the foreign settlements, responsible directly to Nanking and independent of local authorities. (It totalled 320 square miles, most of which remained open rural country outside the conurbation.) Second, the so-called International Settlement, which had originally been British and which was opened to all foreigners in 1854. This was the largest and most populous single political unit within the conurbation, and it included the city's commercial core, most of its manufacturing, and most of its shipping frontage. Third, the French Settlement, usually miscalled the "French

3: Hinder G-5 (1933-1942) 1944 AF15 East China AF15

648 633 722 exercised certain controls in the area of the Settlement north of the Soochow Creek. The Western Extra-Settlement Roads area passed in 1942 completely into the control of the Chinese City Government.

648 633 The governing body of the International Settlement was the Shanghai Municipal Council, of international membership. From 1930, soon after Chinese members first took seats on the Council, until 1941, it consisted of 14 members. Nine foreign members were elected by foreign ratepayers, and the general convention of its composition—five British, two American and two Japanese members—was observed. Five Chinese members were chosen by representative Chinese organisations. The allocation of seats in no way satisfied Japanese aspirations, and on several occasions they sought to increase their representation. In April 1941 a change was made which gave three seats each to British, American and Japanese members, and widened the basis of representation to include one German, one Dutch and one Swiss member. Four seats were allocated to Chinese members. The newly constituted Council proved a success. It pursued vigorous policies and faced many issues, the solution of which political impotence had previously made impossible. Functions formerly exercised by a ratepayers' meeting passed into the hands of the Council.

The administration of the French Concession was under a French Municipal Council appointed by the Consul-General for France. The Chinese City Government was presided over by a Mayor, appointed by the Chinese Government. The Chinese-administered area in Shanghai was a "special municipality," under direct control of the National Government of China, not of the province of Kiangsu in which it was situated.

648 633 692 722 Chinese citizens resident in the two foreign-administered areas were subject to Chinese Courts presided over by officials appointed by the Chinese Government. After the withdrawal of the Chinese Government to Chungking in 1938, the judges of the First Special District Court (in the International Settlement) and of the Second Special District Court (in the French Concession) remained unchanged for a time. In 1940 the Japanese-influenced Nanking Chinese Government obtained control over the Second Special District Court. Chungking-appointed judges were replaced in the First Special District Court when Japanese military occupied the

3: Hinder G-5 (1933-1942) 1944 AF15 East China AF15

International Settlement after the outbreak of Pacific hostilities in December 1941. Under the extra-territorial system foreign residents were subject to the laws of their own country and tried in consular courts. Russia relinquished her rights in 1924; Germany and Austria lost theirs in the war 1914-18.

On December 8, 1941 when Japan attacked Great Britain and the United States, the Shanghai Municipal Council agreed to carry on its functions in the interest of the civilian population. At the close of the year, however, the resignations of American, British and Dutch members of the Council were requested. The British chairman was replaced by a Japanese chairman. In the eyes of the Japanese authorities the agreement reached earlier in the year as to the composition of the Council remained in force, but was considered suspended. The places of resigning members were not filled. The Council carried on with four Chinese, three Japanese, one German and one Swiss member. The international character of the Council was technically preserved.

The free exercise of authority by the Council was, however, restricted. During the first eight months of Japanese occupation more than 80 senior British police were replaced by Japanese, and Japanese came to occupy also the ranking posts in the Secretariat, in the Public Health Department and in the Industrial and Social Division. No major question could be decided by the Council without reference to the Japanese authorities, and, further, the Council was given instructions by the Japanese which it had to carry out. In short, while pursuing its normal municipal functions unhampered, it began to be an instrument of Japanese occupying forces.

IT IS CLEAR THAT in a city whose administrative controls have been so divided there would be complications in the carrying out of the most elementary administrative tasks. For many years the dominant feature of Shanghai was its administrative disunity. The absence of plenary powers on the part of the Settlement at any rate created peculiar difficulties in dealing with problems inherent in large cities.

The authority of the Shanghai Municipal Council derived from the Land Regulations drawn up in 1854 and from Byelaws attached thereto. Later alterations did something to widen initial provisions,

3: Hinder G-5 (1933-1942) 1944 AF15 East China AF15

Special District," areas temporarily beyond, but ultimately to be restored to, its own jurisdiction. The claim was made that only the City Government could regulate Settlement industrial conditions, by enforcing the Factory Law of the Chinese National Government.

An event of importance to the whole problem of law enforcement was the Court Rendition Agreement of 1930[4] between the Council and the local Chinese authorities, which provided for the return to complete Chinese control of the Provisional Court exercising jurisdiction over Chinese citizens of the Settlement and over those residents belonging to nations without extra-territorial rights. From the 1911 Revolution until 1927 there had been a Mixed Court under foreign influence, expressed in part by the sitting of foreign assessors with the Chinese judges in the hearing of cases. Between 1927 and 1930 a Provisional Court functioned, giving place in 1930 to the Shanghai First Special District Court, completely under the direction of the Ministry of Judicial Administration of the Chinese Government. The new agreement provided that the Court should exercise jurisdiction over cases brought in by the Municipal Police of the International Settlement and arising out of infractions of all duly enacted laws of the Chinese Government, together with cases arising from breaches of municipal bye-laws. In limiting the laws which the Court would apply to those duly enacted by the Chinese Government, the agreement excluded the application of regulations promulgated by the various Chinese ministries.

Since the labour laws referred to above in each case state that the competent authority is the municipal government in municipalities and the *hsien* (or county) government in *hsiens*, and since the enforcing municipal authority in Shanghai recognised by the Chinese Government was the Chinese municipal authority, it was logical for the Court owing allegiance to the Chinese authorities to refuse to try a case brought in by a Shanghai Municipal Council organ under any of the labour laws.[5] In the eyes of the Court the

[4] *Municipal Gazette of the Foreign Settlement of Shanghai*, 1930 volume.

[5] All possible means of using the Court as an instrument of enforcement under laws other than labour laws were explored. In 1939 seven workers were burned to death when an apprentice spilled inflammable thinner over a charcoal stove which the owner of the factory had been specifically instructed by Council officials to remove from the workroom. The Municipal Advocate advised that no case would lie under Article 276 of the Chinese Criminal Code which prescribes a five-year

3: Hinder G-5 (1933-1942) 1944 AF15 East China AF15

Council was not a competent authority within the meaning of the Chinese Government acts.

The matter was still further complicated by the fact that many owners of industrial enterprises in the Settlement enjoyed extra-territorial rights. While Chinese legalists argued that extra-territorial rights were of the person and not of the undertaking, in practice Chinese law could not be applied against foreign enterprises owned by those with these rights. At the same time the authorities of the countries with extra-territorial rights held in general that the labour codes of their respective countries did not apply in their Shanghai courts.[6]

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sentence or heavy fines for negligence causing the death of others by neglecting the degree of care required in an occupation. The proximate agent only is held liable by the Chinese Courts, and in this case he, in the person of the apprentice, was dead. A case was, however, instituted under Article 33 of the Law Governing Penalties for Police Offences, which prescribes detention or fine for one who "undertakes any work or business contrary to mandate or regulations." Judgment was obtained against the factory owner. When, however, later cases were instituted against other factory owners failing to carry out instructions, the cases were dismissed.

[6] Two cases were heard in the United States Court for China in which application of American law was involved. In the first, in 1936, the widow of a linesman brought an action for damages against an American company for alleged negligence on the part of the company which resulted in death by electrocution of her husband. The case was dismissed. In his judgment the Judge stated that cases similar to the one in question were now rare in the United States because of the almost universal adoption of Workmen's Compensation Acts. Counsel for the plaintiff suggested the novel possibility of the Compensation Act of the District of Columbia being applicable. This, the Judge stated, required study. But he expressed the view that "it may not be impossible, even in this difficult jurisdiction, through reasonable construction and elimination of unsuitable portions to preserve the substance of the law in some fair and workable system which would be welcomed by both employers and employees."

A second case arose later in the same year. A non-American employee of an American corporation slipped on the floor of the employer's premises sustaining an injury for which damages were sought in a common law action based on the theory of negligence. The plaintiff contended that the defendant company, not having complied with the Workmen's Compensation Act of the District of Columbia, was barred in this action from maintaining the defences of contributory negligence and assumption of risk. The defendant contended that the District of Columbia Workmen's Compensation Act was not applicable in the Shanghai jurisdiction on the grounds of inherent unsuitability.

The Court ruled that the literal compliance with the District of Columbia Compensation Act would be impossible in the Shanghai jurisdiction, but expressed its belief that the principle of the law of the United States should not be ignored. The judgment referred to the "congressional will manifest in the passage of the District of Columbia Compensation Act" and believed that the "Court might award remedies to injured employees consistent with the spirit and objectives of federal legislation."

Judgment was entered for the plaintiff in the sum of US $1,200.

The Court later temporarily withdrew its Opinion pending further study. It was later restored, and the amount of the award to the plaintiff increased to US $2,200.